Docket No.: S63.2B-10814-US01

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Steve Kangas Application No.: 10/658729

Filed: September 9, 2003

Patent No.: 7544381
Issue Date: June 9, 2009

For: Lubricious Coatings for Medical Device

Examiner: Cachet I. Sellman

Group Art Unit: 1792

Mail Stop _____ Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Application for Patent Term Adjustment, 37 CFR 1.705

The patentee hereby requests reconsideration, under 35 USC 154 (d), of the Determination of Patent Term Adjustment made by the Director as indicated on the Issue Notification and on the face of US 7544381, issued 06/09/2009, copies of which are attached hereto.

As indicated on the face of the patent and on the Issue Notification, the adjustment to patent term is 1036 days. Also attached is the PAIR record showing the basis for this determination. The determination is incorrect.

The application was filed on September 9, 2003 and so is entitled to the benefit of the current version of 35 U.S.C. 154. The determination fails to follow the calculation method required by law as determined in *Wyeth v. Dudas*, 88 USPQ2d 1538 (D.D.C. 2008), currently on appeal to the Federal Circuit, which is controlling law for the issues presented herein.

This Application constitutes a request that the patent term adjustment be made in accordance with the determination method described in the *Wyeth* case. Applicant also requests that the decision on this petition be held in abeyance pending final adjudication of the *Wyeth* case.

- (1) This request is accompanied by the fee set forth in §37 CFR 1.18(e).
- (2) This request is timely filed as it is being filed on 8/10/2009. The patent issued 6/19/2009 and the two month date for petitioning the commissioner fell on a Sunday, 8/09/2009. Under the patent statutes, the patentee is entitled to file this petition on the Monday immediately following the Sunday due date. This request could not have been filed prior to the issuance of the patent as the "three year" delay days could not have been determined until the issuance date. To that end, Petitioner notes that a petition filed by this law firm prior to the issue date, in application 10/658729, was held in abeyance pending issuance of the patent in a decision in which the Office stated:

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, a decision is being held in abeyance until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.703(b).

and further:

Rather than file the request for reconsideration of Patent Term Adjustment at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term pursuant to 37 CFR 1.705(d). The USPTO notes that it does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent and accordingly, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent.

(3) Statement of the facts involved:

(i) The correct patent term adjustment and the basis under 37 CFR § 1.702 for the adjustment is as follows:

USPTO delay days to the issuance of the first Office Action	1057
Applicant delay days	-21
Non-overlapping three year days (excluding days	
subsequent to filing of RCE)	+1004

(ii) The relevant dates as specified in §§ 1.703(a) through (e) for which an adjustment is sought and the adjustment as specified in § 1.703(f) to which the patent is entitled are explained as follows:

The Office calculation of 1036 days fails to recognize any "three years" delay days. As *Wyeth* establishes, this is improper. This application was pending for more than three years as of 09/09/2006. No time was consumed by an interference proceeding under 35 U.S.C. 135(a); no time was consumed by the imposition of a secrecy order under 35 U.S.C. 181; by review by the Board of Patent Appeals and Interferences or a Federal court. Applicant is entitled to an additional adjustment to the patent term based on the delay between the three year -date (09/09/2006) and the issue date of (06/09/2009), and adjusted to take into account overlap between the "three years" delay days and the delay beyond 14 months. In this case, the overlap period extended from 09/09/2006 to 10/02/2007.

All delay in the processing of the application by the Office that was requested by the applicant has already been accounted for.

From and including 09/09/2003 through 06/09/2009, the date of issuance, the number of three years days was 1004 days. Subtracting the overlap of 388 days of USPTO delay falling in this same interval, for which the patent term has already been credited, and the Applicant's delay of 21 days leaves a balance of 616 days, which balance should have been added to the 1036 days calculated for the adjustment as of the date of the Determination. Thus the total adjustment that should have been shown on the face of the patent 35 USC 154 (b) was 1652 days.

- (iii) The patent is not subject to a terminal disclaimer.
- (iv) (A) The applicant does not believe that there are any circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704, other than those already accounted for in the applicant delay days noted above.

All items required under 37 CFR 1.705 having been provided herein, the applicant requests that the Patent Term Adjustment be corrected to show an adjustment of **1652** days.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

Date: August 10, 2009 By: /Lisa Ryan-Lindquist/

Lisa R. Lindquist

Registration No.: 43071

6640 Shady Oak Rd., Suite 400 Eden Prairie, MN 55344-7834 Telephone: (952) 563-3000 Facsimile: (952) 563-3001

UNITED STATES PATENT AND TRADEMARK OFFICE

ENTRES NEA YEA DEPARCEMENT OF CRASMERCE.
Freibod States Parent and Freidonach Office
Address Crasmannic Parent Parent Provides
Crasmannic Propose 2008 1966
Act and the Propose 2008 1966

480.8.2.2008.80	\$85776 BAYYE	EAYESVI NO.	ACTORNEY DUCKET NO.	COMPRIMATERS NO.
10/685.725	06/04/2509	7543381	\$63.2 B814 US01	3796

49) 35% 35%(200)

VIDAS, ARREYT & STEINKRAUS, P.A. SUITE 400, 6640 SHADY OAK ROAD EDEN PRAIRIE, MN 55344

ISSUE NOTIFICATION

The projected patent number and issue date are specified above.

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)

(application filed on or after May 29, 2000)

The Patent Term Adjustment is 1636 day(s). Any patent to issue from the above-identified application will include an indication of the adjustment on the front page,

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (http://pxir.uspro.gov).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (571)-272-4200.

APPLICANT(s) (Please see PARCWEB sue impt//pair.aspio.gov for additional application

Steve Kangas, Woodbury, MN;



US007544381B2

(12) United States Patent

(10) Patent No.: US 7,544,381 B2

,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	Kangas		(45) Date of Patent:	Jan. 9, 2009			
(54)	LUBRICE DEVICE	OUS COATINGS FOR MEDICAL	S.093.934 A * 42/1997 But	stortier et al			
(73)	Inventor:	Steve Kangas, Woodbury, MN (US)	5.949.570 A 7/1999 Ho	stottler et al			
(73)	Assignee	Boston Scientific Science. Inc., Maple Grove, MN (US)	6.030.636 A 2/2000 Ho 6.040.658 A 3/2000 Ho	stettler et al			
(*)	Notice:	Subject to any discisimer, the term of this potent is extended or adjusted under 35 U.S.C. 154(h) by 1036 days.	6,176,849 BI 3/2001 Xar 6,265,016 BI 7/2001 Ho 6,331,578 BI 3/2001 Eu	steffer et al. 428,423,3 ng et al. 604/265 steffer et al. 427,7,111 mer et al. 523/105			
(21)	Appl No.:	18/658,729	6,558,798 B2 5/3080 ZEc	ing et al			
(22)	Filed:	Sep. 9, 2883	6,610,935 B2 8/2093 Yan	ng et al			
(65)		Prior Publication Data	2993/6022194 A1 = 2/2002 Mo	rigaki,			
	US 2005/0	1055044 A.1 Mar. 10, 2005	FOREIGN PATENT DOCUMENTS				
(51)	Int. Ct. B05D 3/0 A6H, 27/			V1990 8/1990 CATTONS			
(52)	C03C 25/		Poss, ict. Development of Photo-Polymerisable Polymeri, Alcohol for Boolechnological Applications, Apr. 28, 2003, pp. 330-336.				
(58)	522/149; 522/96; 522/109 * ched by examiner						
1200		427/558; 522/32, 96, 149 stion file for complete search history.	Primary Examiner William Phillip Plotcher, III Assistant Examiner Cachet I Sellman (74) Attorney, Agem. or Firm Vidss, Agrett & Sceinkraus,				
(36)		References Cited	ŘA.				
	U	S. PATENT DOCUMENTS	(57) ABSTRA	C T			
	4,372,630 A 4,364,580 A		An astraviolet cumble lubricioss				

4,272,620	A	4	6/3981	Jehimus
4,564,580	Å		1/3988	lebioura et al
4,777,114	A		10/1988	lehimara et al
4,891,300	.2		1/3996	Khimma et al 438/283
\$.024,805	A		6.399	Johinnura et al
5.206.133	A		47 (449)	Muchler-Bess et al 439/276
5,376,072	A		31/3996	Hosteriles et al 427/532

An altraviolet curable lubricious coating including at least one lubricious polymer and at least one oxygen-insensitive crosslinkable polymer, methods of making and using the same, and articles coated therewith.

11 Claims, 1 Drawing Sheet



Rocked States States and Fradermack Office

Name ; 30s Inter ; 84s set \$179.3 ; 6 house; 4 south ; Carlacte \$48 schmid: 1 side Name ; Note } 40s.

Steed control of	Secondary Probability	Appeloation intermedi	on Reschessel			**
9899 20	Millell Assessed	a a	@Didentaria	ed dagaination, do Eliad - Geliec.	Centilad Sig Dingger 💥	Nekse i Derken tilek
ringentin pigesineen	400000,732		N CORTROL THE MEON			100
lascopológ	- Annual Comment of		CONTRACTOR OF THE CONTRACTOR	100 100 100	war ar er a Age	**************************************
tet Sessoonaa & Europea	5 9 kg C 200 s	2016 J. WALSON	Maggardika - Discuss North Madagas - Sacjus Secondo	1 000 1 1000	Mark Marine Albert	portions
22000220202020	Patent Term	Adjustment	•	•		
001	Filing or 371(c)	Date:	69-69-2003	USPTO Selay (PTO) Delay	(days):	1057
nta Georgeat finto	Table Date of Pa	tents	06-09-2009	Three Yearsi		,
Minusis See Description	Fre Issue Petitio	ns (daya):	÷®	Applicant Delay (APPL) De	day (days):	21
so bottoop	Post-Issae Retiti	ans (deys):	֩	Total Patent Term Adjustn	nent-(days)	2036
	USPTO Adjustm	ent (days):	45	Englandens St. Leighber	•	
	Patent Term	djustment Hist	ory			
eroteorio	Date		Contents Desc	riptian	PTO(Days)	APPL(Days)
Superior A Consider	65-23-280%	PTA 36 Months				
	06-09-2009	Patant lesue Da	te Used in PTA Calculatio	17		
	02-07-3003	Dispatch to FDC	•			
	65-69-2009	Application Is C	onsidered Ready for Issue	9		
	\$5-95-2009	Issue Fee Paym	ent Verified			
	03-05-2003	Issue Fee Paym	ent Paceived			
	6/2-21-2009	Mail Notice of Al	lowance			
	62-10-20 09	Notice of Allowa	nce Data Verification Co	npepet		
	02-03-206\$	Cocument Verifi				
	11-10-2027	Date Forwarded				
	11/14-2008	•	Non-Enal Action			
	06-57-5008	Meil Non-Finel F				
	(0-14-2003	Non-Final Reject				
	66-21-2009					
	05-15-2008					21
	03-15-2000	Mail Non-Final 9	ension of Time - Granted			4
	61-24-2006 61-22-2068		•			•
	11-27-2007	Non-Final Reject	ip Exertimes in GAU			
	11-29-2007	Date Forwarded				
	41-02-2007		ction / Restriction Filed			
	16-17-2007	Withmen Saga				
	10-16-2007	Flagged for 5/25				
	10-92-2007	Mail Plestriction			1987	
	09-30-2007		Restriction / Election.		4	
	69-30-2007		to Examiner in GAU		4	
	11-24-2053		dosure Statement consid	ered	*	
	02-29-2505		dosuće Statement konsid		×	
	09-03-2005	Miscelleneous Ir	scoming Letter		*	
	92-28-3005	Reference captu	ne on 105		*	
	82-23-2065	Information Exa	dosuce Statement (103)	Filed	44	
	62-23-2505	Information Dis-	dosure Statement (EDS).	Filed	*	
	03-29-2004	IFW TS% Proper	sing by Tach Center Com	plete	*	
	11-24-2003	Reference captu	e on IDS		44.	
	03-09-2004	Čase Spokated :	UAD exertiment or GAU		4	
	11-24-2003	Information Des	dosone Statement (IOS)	Filed	*	
	11-24-2053	Information Oss	dosuse Statement (IDS)	Ried	*	
	03-09-2004	IFW TSS Proces	king by Tech Centex Com	plete	44	
	61-69-2204	Trensfer Inquiry	to GAU		*	
	13-13-2003	Reference captu			*	
	12-01-2603	Application Refu			#	
	12-01-2003	Application Retu			4	
	12-91-2002		atched from CIPE		*	
	12-02-2003	Application Is N			x	
	11-21-2903	Geared by QIPE			*	
	99-30-2003		R Auto Security Peview			